

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, *ex rel.* FRANK C. FOY
AND SUZANNE B. FOY,

Qui tam Plaintiffs,

v.

No. 6:09-CV-178
(Removed from Santa Fe District Court)
(Case No. D-101-CV-2008-1895)

VANDERBILT CAPITAL ADVISORS, LLC, *et al.*,

Defendants.

MOTION FOR EXPEDITED DISCOVERY SCHEDULE

The Plaintiff State of New Mexico *ex rel.* Foy respectfully moves for the establishment of an expedited discovery schedule. The discovery schedule should eliminate or shorten the delay periods in Fed. R. Civ. P. 26(d). Plaintiff respectfully asks the assigned judge or magistrate to address these discovery issues as soon as practicable, perhaps in a telephonic conference, to eliminate the confusion over discovery created by the removal of this case to federal court. Whether or not this case is ultimately remanded to state court, there should be no delays in the discovery which Plaintiff commenced before removal.

When Plaintiff served the complaint on defendants, the Plaintiff also served initial requests for production and interrogatories to each of the defendants. Under the New Mexico rules, defendants were required to respond to the discovery within 45 days. Meyners + Company, LLC filed a Motion for Protective Order and to Stay Discovery in state court prior to removal.

The Plaintiff has also served subpoenas duces tecum on the New Mexico State Investment Council and the Educational Retirement Board. The SIC and the ERB have filed motions to quash in state court.

If this case had remained in state court, responses to these objections and motions would have been due in the next few days. However, such discovery matters are apparently stayed until the Court enters an order concerning a discovery schedule. Accordingly, the Plaintiff requests instructions from the Court on how to proceed with respect to the pending motions to quash or motions to compel.

The Plaintiff State of New Mexico submits that all discovery matters, including motions to quash or motions to compel, should be decided as quickly as possible. The State of New Mexico should not be delayed in pursuing the discovery which it commenced well before this case was removed. Any delay in this case is extremely prejudicial to the State of New Mexico, for reasons that will be explained in more detail when Plaintiff responds to Vanderbilt's motion for extension of time.

Plaintiff's counsel has previously conferred with defense counsel concerning discovery. It is clear that most, if not all, of the defendants will oppose this motion.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall
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I hereby certify that a true and correct copy of the foregoing was emailed on February 24, 2009 to all counsel of record, and also to those counsel who have not filed appearances, but who have identified themselves as representing defendants.

/s/ Victor R. Marshall